

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE FIELDS,

Defendant-Appellant.

UNPUBLISHED

June 19, 2001

No. 221299

Wayne Circuit Court

LC No. 98-012033

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of operating a chop shop, MCL 750.535a. Defendant was sentenced to one to five years in prison. We affirm.

Defendant first argues that he has denied effective assistance of counsel. Defendant did not raise his claim of ineffective assistance of counsel in a motion for a new trial or an evidentiary hearing. Accordingly, our review is limited to errors apparent on the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000); *People v Noble*, 238 Mich App 647, 661; 608 NW2d 123 (1999). We presume effective assistance of counsel, and a “defendant bears a heavy burden of proving otherwise.” *Id.* at 661-662. Defendant must not only demonstrate that counsel’s performance was deficient, but also that defendant was prejudiced by the deficiency. *Id.* Accordingly, he must show that, but for his counsel’s mistake, the factfinder would not have convicted him. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994); *Snider*, *supra* at 424.

Defendant claims that his trial counsel failed to question his parole officer, who was called to rebut defendant’s alibi, regarding her record log book and failed to admit the record log book in evidence. The record establishes that defendant’s counsel aggressively cross-examined defendant’s parole officer regarding the log book, placing in question the parole officer’s claim that she telephoned defendant at his home. Thus, we presume defendant’s counsel was well acquainted with the contents of the record log book. It is apparent from the record that defendant’s counsel intended to limit the parole officer’s testimony to the events of June 12, 1998. Defendant has identified no evidence to rebut the presumption that his trial counsel acted as a matter of trial strategy. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Avant*, 235 Mich App 499, 507-508; 597 NW2d 864 (1999). We will not substitute our

judgment for that of trial counsel regarding matters of trial strategy. *People v Rice (On Remand)*, 235 Mich App 429, 445; 597 NW2d 843 (1999).

Defendant next argues that there was insufficient evidence to support his conviction. For a conviction to be upheld, the prosecution must have presented sufficient evidence to justify the trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). In determining whether the prosecution has presented sufficient evidence, this Court must view the evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Johnson, supra* at 723; *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). Challenges to the witnesses' credibility will not support a claim that evidence is insufficient to support a conviction. Appellate courts will not interfere with the jury's role of determining the credibility of witnesses. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000). Furthermore, circumstantial evidence and the reasonable inferences from that evidence can constitute satisfactory proof to support a defendant's conviction. *Nowak, supra*; *Noble, supra* at 655.

The elements of operating a chop shop relevant to the instant case are: (1) defendant controls a premises, (2) where one or more persons "are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle." MCL 750.535a(b); see *People v Ally*, 171 Mich App 602, 605; 430 NW2d 794 (1988). The circumstantial evidence in the instant case, when viewed in a light most favorable to the prosecution, established that defendant controlled the garage at 16500 Prevost to the extent that it was used to dismantle the claimant's stolen Ford Taurus. Defendant, who lived at 16500 Prevost, was seen in the garage with a vehicle matching the description of the stolen car. Immediately thereafter, defendant closed the garage and Detroit Police Lieutenant Robert Ennis, who was conducting surveillance, heard sounds one could reasonably conclude came from someone dismantling the car. A few days later, defendant was seen carrying parts out of the garage, including doors, fenders and seats, and transporting them to another location. The parts were later identified as being components of the complainant's Taurus. Although defendant seems to challenge his identification as the man seen at 16500 Prevost on both occasions, the witnesses never wavered in their assertions that defendant was the man they saw. Viewing the foregoing evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *Johnson, supra*.

Defendant further argues that the trial court erred when it permitted his parole officer to testify. We review a trial court's decision to admit evidence for a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). We will only find an abuse of discretion where an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the trial court's ruling. *Snider, supra* at 419. In the instant case, defendant's girlfriend testified that defendant spent the entire day of June 12, 1998, with her at a flea market. Defendant's parole officer testified in rebuttal that she reached defendant by telephone at his home sometime during the period in which defendant's girlfriend

said he was with her. In general, rebuttal evidence is admissible to contradict, explain or disprove evidence presented by the other party. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996); *Rice, supra* at 442. Defendant fails to provide any legal authority to support his argument that the parole officer's testimony was unfairly prejudicial when considering the lack of other significant probative evidence put forth by the prosecution, thereby failing to properly present such argument on appeal. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998); *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). Furthermore, contrary to defendant's contention, his whereabouts on June 12, 1998, was a fact at issue in his trial.

Defendant also claims that the trial court erred in admitting prior bad act evidence when Lieutenant Ennis testified that defendant had provided a certain address when he was arrested on prior occasions. The trial court promptly instructed the jury to disregard the statement, which was not admitted into evidence. We conclude that the trial court's immediate instruction was sufficient to clarify to the jury that it was not to consider the statement. Jurors are presumed to follow their instructions. *People v Torres*, 222 Mich App 411, 423; 564 NW2d 149 (1997).

Finally, defendant argues that he was convicted of both operating a chop shop and receiving and concealing stolen property in violation of the Constitutional protections against double jeopardy. Because the trial court vacated defendant's receiving and concealing stolen property conviction and sentenced him only for the chop shop conviction, this argument has no merit. *People v Fox*, 232 Mich App 541, 555 n 6; 591 NW2d 384 (1998); *People v Bigelow*, 229 Mich App 218, 221-222; 581 NW2d 744 (1998).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Brian K. Zahra